



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Mike McIntyre

NOV 20 2015

Lumberton, NC 28358

RE: MUR 6728

Dear Mr. McIntyre:

On March 22, 2013, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On November 19, 2015, based upon the information provided in the complaint, and information provided by you, the Commission decided to exercise its prosecutorial discretion and dismiss the allegations you violated the Act and Commission regulations. Accordingly, the Commission closed its file in this matter on November 19, 2015.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Donald E. Campbell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Daniel A. Petalas  
Acting General Counsel

BY: Jeff S. Jordan  
Assistant General Counsel  
Complaints Examination and  
Legal Administration

Enclosure  
Factual and Legal Analysis

# FEDERAL ELECTION COMMISSION

## FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Mike McIntyre MUR 6728  
Mike McIntyre for Congress and  
Marion D. Thompson, in her official capacity as treasurer

### I. INTRODUCTION

This matter was generated by a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations by Mike McIntyre and Mike McIntyre for Congress and Marion D. Thompson, in her official capacity as treasurer. It was scored as a low-rated matter under the Enforcement Priority System, by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

### II. FACTUAL AND LEGAL ANALYSIS

#### A. Factual Background

The Complainant in this matter, Mike Rusher, on behalf of the North Carolina Republican Party, alleges that Mike McIntyre and Mike McIntyre for Congress and Marion D. Thompson, in her official capacity as treasurer, (collectively, the "Committee")<sup>1</sup> failed to file an amended Statement of Organization, FEC Form 1, within ten days of the filing of McIntyre's 2014 Statement of Candidacy, in violation of the Act and Commission regulations. Compl. at 1. Complainant states that McIntyre filed a Statement of Candidacy, FEC Form 2, on January 24, 2013, designating Mike McIntyre for Congress as his principal campaign committee for the 2014

<sup>1</sup> The Committee is the principal campaign committee of Congressman Mike McIntyre, representative of North Carolina's 7th Congressional District since 1997. McIntyre filed a Statement of Candidacy on January 24, 2013 for the 2014 election cycle; however, on January 8, 2014, McIntyre announced he would be retiring at the end of his 2012 term and would not seek reelection in 2014. See <http://mcintyre.house.gov/index.php/newsroom/press-releases/859-mcintyre-to- retire-at-end-of-congressional-term>.

1 election cycle. *Id.* at 1, 2. Complainant asserts that “this designation triggered the Committee’s  
2 obligation to file a Statement of Organization” within 10 days. *Id.* at 2. Complainant contends  
3 that the Committee has not amended its Statement of Organization since January 18, 2007. *Id.*

4 Complainant also alleges that the Committee failed to itemize \$61,804.82 in transfers  
5 from McIntyre 2012 Victory Fund (“Victory Fund”).<sup>2</sup> *Id.* Specifically, Complainant states that  
6 the Committee reported three transfers from the Victory Fund on its 2012 Year End report, but  
7 “failed to itemize those receipts as individual contributions from the original contributors.” *Id.*

8 In its Response, the Committee states that “there was no need” to file an amended  
9 Statement of Organization because there have been “no changes to [Mike] McIntyre for  
10 Congress in its designation as the principal campaign committee.” Committee Resp. at 1. The  
11 Committee states that it was organized in 1996 as the “primary campaign committee” of Mike  
12 McIntyre, and it has remained active as such since its inception. *Id.*

13 Regarding the joint fundraising allegation, the Committee avers that the allocation of the  
14 joint fundraising proceeds and expenses was based on a “prearranged agreement” between the  
15 Committee and the Victory Fund, in accordance with Commission regulations. *Id.* The  
16 Committee states that the Victory Fund distributed the net joint fundraising proceeds at issue in  
17 three lump sum payments, and that the Committee itemized the receipts as distributions, not  
18 contributions, as required by Commission regulations. *Id.* Congressman McIntyre responded  
19 that the Complainant’s allegations address the Committee and not himself, and that he has no  
20 knowledge or reason to believe that any non-compliance occurred. McIntyre Resp. at 1.

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<sup>2</sup> Victory Fund filed its initial Statement of Organization on November 9, 2012, and made its first transfer to the Committee on November 15, 2012. Victory Fund filed a Termination Report on February 13, 2013, and was approved for termination on February 21, 2013. See Victory Fund Termination Report, dated February 13, 2013, and Termination Approval, dated February 21, 2013.

1 The Committee's filings disclose four transfers from the Victory Fund during the 2012  
2 election cycle, totaling \$64,802.82: \$3,000 on November 15, 2012; \$10,000 on November 28,  
3 2012; \$11,800 on December 5, 2012; and \$40,004.82 on December 19, 2012. In addition, the  
4 Committee's 2013 filings disclose two additional transfers from the Victory Fund, totaling  
5 \$15,000: \$2,000 on February 7, 2013; and \$13,000 on February 12, 2013. All of these receipts  
6 were reported under FEC Form 3 Line 15 as "Other Receipts" for "2012, Recount." See Mike  
7 McIntyre for Congress 2012 30 Day Post General Report at 88; 2012 Year End Report at 7; and  
8 2013 April Quarterly Report at 35, 36.

9 Similarly, the Victory Fund's filings disclose six transactions to the Committee on the  
10 same dates and in the same amounts with the descriptions, "transfer for recount expenses" or  
11 "transfer to authorized committee." See McIntyre 2012 Victory Fund 2012 30 Day Post General  
12 Report at 16; 2012 Year End Report at 11; and 2013 Termination Report at 6.

13 **A. Legal Analysis**

14 Commission regulations require that within 15 days of an individual becoming a  
15 candidate under 11 C.F.R. § 100.3, he or she must designate a principal campaign committee.  
16 11 C.F.R. § 101.1(a). Within 10 days after it has been designated by the candidate, the principal  
17 campaign committee must register with the Commission by filing a Statement of Organization  
18 (FEC Form 1). 11 C.F.R. § 102.1. Any change in information previously submitted in a  
19 statement of organization shall be reported no later than 10 days after the date of the change.  
20 52 U.S.C. § 30103(c). When a candidate files a Statement of Candidacy (FEC Form 2) in a new  
21 election cycle, the candidate may either redesignate his or her previous campaign committee, or  
22 designate a new principal campaign committee. If the candidate redesignates an existing

1 committee, the committee need only amend its Statement of Organization within 10 days to  
2 reflect any new information. *See* 11 C.F.R. § 102.2(a)(2).<sup>3</sup>

3 A candidate's principal campaign committee is required to amend its FEC Form 1  
4 (Statement of Organization) if it participates with a joint fundraising committee, and is required  
5 to provide the name and address of the joint fundraising representative, and to state the name and  
6 address of the depository institution holding the joint fundraising account, if that account is  
7 different from the depository named on its current FEC Form 1. *See* 11 C.F.R. § 102.17. In  
8 addition, each federal candidate participating in the fundraiser must amend FEC Form 2  
9 (Statement of Candidacy) to designate the joint fundraising representative as an authorized  
10 candidate committee. *See* 11 C.F.R. §§ 102.2(a)(2), 102.17(a)(1)(i), (b)(1), (b)(2), and (c)(3).

11 The affiliated principal campaign committee is required to report the net proceeds received from  
12 the joint fundraising committee as a transfer-in on Schedule A supporting Line 12 of Form 3.

13 Additionally, the affiliated candidate committee must provide a memo Schedule A itemizing its  
14 share of gross receipts received through the joint fundraising committee as contributions from  
15 original contributors. 11 C.F.R. § 102.17(c). The memo schedule should itemize each individual  
16 who has contributed an aggregate in excess of \$200 during the election cycle to the committee,  
17 and provide the amount of unitemized contributions received. The memo schedule should also  
18 itemize the committee's share of all contributions from political committees, regardless of  
19 amount. *Id.*

20 The available information and FEC records indicate that when the Committee began  
21 participation with the Victory Fund, it did not amend its Statements of Candidacy or

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<sup>3</sup> According to the Committee, there was no new information to report concerning its status, address, treasurer, or banking institution. Therefore, as to these specific items, no new Statement of Organization would have been required.

1 Organization, as required when a principal campaign committee participates with a joint  
2 fundraising committee. Although the Committee did ultimately report all funds distributed to it  
3 by the Victory Fund, it did not provide a memo Schedule A itemizing its share of gross receipts  
4 received through the Victory Fund as contributions from original contributors, as required under  
5 Commission regulations. Also, while the Victory Fund reported the disbursements to the  
6 Committee as “transfers,” the Committee incorrectly reported the distributed funds under FEC  
7 Form 3 Line 15 as “Other Receipts” from the Victory Fund, instead of reporting the funds as a  
8 “transfer-in” on FEC Form 3 Line 12.

9 Accordingly, in light of the terminated status of the Victory Fund and the fact that the  
10 funds at issue were reported by the Committee (albeit in the wrong area of its disclosure reports),  
11 the Commission exercises its prosecutorial discretion and dismisses this matter pursuant to its  
12 prosecutorial discretion. *See Heckler v. Chaney*, 470 U.S. 821 (1985).